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March 27, 2023

VIA ECF

Honorable George B. Daniels
District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: *Gaffney v. Muhammad Ali Enterprises, LLC, et al.*
Civil Action Nos. 1:18-cv-08770-GBD-OTW; 1:20-cv-07113-GBD-OTW
DEFENDANTS' OPPOSITION TO RE-FILED MOTION TO CORRECT
THE RECORD**

Dear Judge Daniels,

Defendants Muhammad Ali Enterprises LLC ("MAE") and Authentic Brands Group LLC ("ABG") (collectively the "Muhammad Ali Entities") submit this letter in opposition to Plaintiff's Re-filed Motion to Correct the Record Pursuant to Fed. R. Civ. P. 60(b)(1) (the "Motion") (First Action Dkt. 190; Second Action Dkt. 78). Plaintiff first filed the Motion on January 25, 2023 (First Action Dkt. 179) with a document referenced in the Motion and attached at Exhibit A ("January Exhibit A") (First Action Dkt. 179-1). On March 23, 2023, Plaintiff re-filed the exact same Motion with a different document attached at Exhibit A ("March Exhibit A") (Dkt. 190-1; Second Action Dkt. 78-1). The Motion should be denied for all of the reasons stated in the Muhammad Ali Entities' letter in opposition to the Motion filed on February 6, 2023 (First Action Dkt. 180). The Motion should also be denied because it is based on misrepresentations to the Court.

In the Motion, Plaintiff states:

Indeed, on December 12, 2022, prior to the Court's pre-trial conference, Gaffney forwarded to Defendants ***a chart of the thirty-four (34) Photographs*** (include of the three Photographs discussed above) ***that Gaffney is presently aware of in this litigation (a copy of that chart is attached as Exhibit A).***

Motion at 2 (emphasis added).

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The chart accompanying the first filed Motion, which remains of record at Dkt. 179-1, indeed references 34 photographs. Notably, it is not the chart that was sent to Defendants on December 12, 2022. That chart is attached hereto as **Exhibit 1**.¹

In contrast, the chart accompanying the re-filed Motion, which is of record at First Action Dkt. 190-1 and Second Action Dkt. 78-1, references 36 photographs. Plaintiff has added photographs titled “Ali-013.jpg” and “Ali-105.JPG” to the chart. Neither of these two photographs, nor the three additional photographs Plaintiff initially moved to be “un-dismissed” from the Action, were identified as Photographs at issue in the operative complaints (First Action Dkt. 59; Second Action Dkt. 1-1), the Proposed Joint Pretrial Order dated December 2, 2022 (First Action Dkt. 166), or the letter to the Court dated March 3, 2022 (First Action Dkt. 151).

Plaintiff failed to alert the Muhammad Ali Entities’ counsel or the Court that the March Exhibit A is different from January Exhibit A. Plaintiff further failed to alert the Muhammad Ali Entities’ counsel or the Court that both the January Exhibit A in 179-1 and the March Exhibit are different from the chart sent to Muhammad Ali Entities on December 12, 2022. Moreover, Plaintiff failed to alert the Muhammad Ali Entities’ counsel or the Court that the March Exhibit A contains two additional photographs or that it references 36, not 34, photographs. The Muhammad Ali Entities determined these facts by painstakingly reviewing the record.

Plaintiff’s attempt to include these two additional photographs in the Action without alerting the Court appears to be an intentional effort to mislead the Court. This conclusion is further supported by the fact that Plaintiff failed to amend its Motion even after the Muhammad Ali Entities raised the issue with counsel. Plaintiff should not be permitted to sandbag the Muhammad Ali Entities by litigating over photographs that were not identified during discovery as at issue in this Action.

For the foregoing reasons, the Muhammad Ali Entities respectfully request that the Court deny Plaintiff’s Motion in its entirety and grant the Muhammad Ali Entities such other and further relief as the Court deems just and proper.

Respectfully submitted,

FERDINAND IP, LLC

/s/Jessica S. Rutherford
Jessica S. Rutherford

cc: All counsel of record (via ECF)

¹ Both charts appear to identify the same 34 photographs.